

2017-2018 BUDGET QUESTION
Response to Request for Information

DEPARTMENT: Convention Center and Law

REQUEST NO.: 111

REQUESTED BY: Pool

DATE REQUESTED: 8/21/17

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REQUEST: Please provide a breakdown in both dollar figures and in percentages of what the Hotel Occupancy Tax (HOT) currently funds. Please also discuss the legal requirements around the HOT and identify items currently paid through the General Fund that would be eligible to be funded through HOT.

RESPONSE:

FY17 Budgeted HOT Allocation

Category	Type of HOT	% Allocation	FY17 Budget	Comments
Convention Center	Ch. 351	4.50 (64.29% of 7)	\$45,247,356	Pledged to debt; used for operations and capital projects
Tourism and Promotion	Ch. 351	1.45 (20.71% of 7)	\$16,472,944*	Funds ACVB/Visit Austin and Historic Preservation*
Cultural Arts	Ch. 351	1.05 (15% of 7)	\$10,560,733	Max allowed by law; used for cultural arts grants
Convention Center/Waller Creek Venue	Ch. 334	2.00	\$20,107,925	Pledged to debt; used for capital projects on expansion part of facility

*For FY17, Tourism and Promotion funds were allocated as follows: ACVB/Visit Austin was \$15,473,733, and includes \$500,000 for Historic Preservation Grants. Parks and Recreation Department received \$993,841 for eligible Historic Preservation capital projects and \$5,370 for eligible marketing/promotion costs.

2017-2018 BUDGET QUESTION

Response to Request for Information

Legal Framework

The legal framework for expenditures of the City's regular hotel occupancy tax (the 7% - not the 2% that is pledged to the venue bonds) fits between three guideposts:

- 1) the state statute (the Texas Tax Code),
- 2) applicable Texas Attorney General Opinions interpreting the Tax Code, and
- 3) the City Code.

Texas Tax Code requirements:

A. The HOT expenditures must promote tourism and the convention industry. (Expenditures must put "heads in beds").

B. The HOT expenditures must be for a use that is on "the list" of eligible uses set out in the Tax Code. The list of lawful uses is set out in Texas Tax Code Section 351.101(a). Some are bracketed for specific cities. Austin has the following uses available:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;

(2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;

(4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;

(5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

(A) at or in the immediate vicinity of convention center facilities or visitor information centers; or

(B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates.

Even if a project meets the requirements set out above, the Tax Code sets out three other limits on use of the HOT funds. They are:

1. HOT funds may not be used for general revenue purposes or general government operations of a municipality. Texas Tax Code 351.101(b)
2. Up to 15% of the tax revenues may be spent on the arts, and

2017-2018 BUDGET QUESTION

Response to Request for Information

3. Up to 15% may be spent on qualified historic restoration projects. Texas Tax Code 351.103(c):

- The Tax Code does authorize the City to contract with other entities to use the HOT funds for the allowable uses, and to give grants of hotel occupancy tax funding for eligible uses. The Tax Code sets out requirements for transparency and accountability for any funds the City uses in this manner. Samples of these types of agreements can be found in the ACVB (now Visit Austin) contract and in the Cultural Arts and Historic Grant programs.

Interpretation of Tax Code by the Texas Attorney General:

The Texas Attorney General's Office has written several opinions construing this statute. Samples of these opinions are:

- GA-0124: direct advertising of a show of senior citizens' quilts was authorized as both attracting tourists and as fitting within the promotion of the arts category, but providing food for the seniors was not. As Attorney General Greg Abbott noted: "The City may not allocate any tax revenue to fund meals at the Senior Center because meals are not within any permissible use listed in section 351.101(a). See Tex. Tax Code Ann. § 351.101(a) (Vernon Supp. 2004)."
- DM-0394: College Station had not documented that building a library was an authorized use on the list set out in 351.101(a), and therefore hotel occupancy taxes could not be used to build the Bush Library. The Opinion summarized the law as follows: "The City of College Station may, without violating article III, section 52 of the Texas Constitution, spend public funds on the George Bush Library to be established by Texas A&M University only if there is a city purpose for the expenditure, if the city receives adequate consideration for the expenditure, and if sufficient controls are attached to the transaction to ensure that the public purpose will be carried out. Hotel-motel occupancy taxes raised by the city under chapter 351 of the Tax Code may be spent only for the purposes expressly set out in section 351.101 of the code. No showing has been made that the tax funds proposed for allocation to the George Bush Library will be used for any purpose stated in section 351.101."
- KP 0131: City of Lakeway inquired regarding use of the funds for a performing arts center that would have a regional and statewide draw. The Opinion notes that expending the funds to directly enhance tourism and promote tourism and the convention and hotel industry means to use the funds directly with nothing in between. The use for acquiring and constructing convention centers facilities is clearly authorized by the statute. The "promotion of the arts" section doesn't specifically authorize construction, so the Opinion questioned whether the funds could be used to construct a performing arts center unless it was primarily used for conventions. However, the Opinion summarized the law as stating that it is for a municipal governing body to determine whether an expenditure of hotel occupancy tax revenue is proper once the governing body determines that it meets the two part test of the statute.

City Code Requirements:

§ 11-2-7 - ALLOCATION AND USE OF HOTEL OCCUPANCY TAX REVENUE.

(A) This section does not apply to taxes collected under Article 2 (Venue Projects).

(B) The revenue derived from the tax authorized by this chapter may be used only as provided by Section 351.101 (Use of Tax Revenue) of the Texas Tax Code to promote tourism and the convention and hotel industry as follows:

2017-2018 BUDGET QUESTION

Response to Request for Information

(1) 64 2/7 percent of the funds collected is allocated to the Convention Center Capital Improvement Project Fund and may be used for:

(a) the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities as defined in Section 351.001 (Definitions) of the Texas Tax Code; and

(b) the City's provision of facilities, personnel, and materials for the registration of convention delegates or registrants;

(2) 20 5/7 percent of the funds collected is allocated to the Tourism/Promotion Fund and may be used for:

(a) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City or its vicinity; and

(b) for historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums located at or in the immediate vicinity of convention center facilities or elsewhere in the City or its vicinity; and

(3) 15 percent of the funds collected is allocated to the Cultural Arts Fund and may be used for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of a major art form.

(C) Revenue derived from the tax shall only be expended to directly enhance and promote tourism and the City's convention and hotel industry. Tax revenue may not be used as general revenue for general governmental operations of the City.

Summary

For the City's expenditures of Hotel Occupancy Tax to fit within the Tax Code legal framework, the expenditures must directly promote tourism and the hotel and convention industry, and fit within the list of allowable uses for the City of Austin, per Texas Tax Code 351.101(a). The City can use up to 15% of the 7 percent hotel occupancy tax for cultural arts funding. And, the City can use up to an additional 15% for eligible historic restoration projects. The City is allowed to contract with outside entities to use the hotel occupancy taxes for the eligible uses with a contract that meet the transparency requirements set out in the Texas Tax Code. All grants must also comply with State law. The funds should not be used for general revenue purposes.

The City Code further limits how the City can spend the HOT funds as set out above. Although the City cannot change state law, Council could change the percentages set out in the Code, or consider other allowable uses within the list in the Tax Code.